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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,

4 v. 14 Cr. 130 (LAP)

5 KENDAL THOMPSON,

6 Defendant.

7 -----x

New York, N.Y.
September 2, 2015
10:00 a.m.

9
10 Before:

11 HON. LORETTA A. PRESKA
12 District Judge

13 APPEARANCES

14 PREET BHARARA
15 United States Attorney for the
16 Southern District of New York
BY: RICHARD COOPER
Assistant United States Attorney

17 ANTHONY CECUTTI
18 ALEX LESMAN
Attorneys for Defendant

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1 THE COURT: Good morning, ladies and gentlemen. Won't
2 you be seated.

3 (Case called)

4 (In open court)

5 MR. COOPER: Good morning, your Honor. Richard Cooper
6 for the government.

7 THE COURT: Good morning. Is the defense ready?

8 MR. CECUTTI: Yes, your Honor. Good morning. Anthony
9 Cecutti for Mr. Thompson, and I'm also joined by Alex Lesman.

10 THE COURT: Good morning. Mr. Cecutti, have you and
11 your client had adequate time to review the presentence report?

12 MR. CECUTTI: We have, your Honor.

13 THE COURT: Is there any reason it should not be made
14 part of the record?

15 MR. CECUTTI: No. Your Honor, I do have one issue I
16 would like to raise with respect to the probation report.

17 THE COURT: Yes, sir.

18 MR. CECUTTI: I had submitted objections to probation
19 back on July 28, and in my objections one of the objections I
20 made had to do with an offense that Mr. Thompson was involved
21 in back on July 26, 2011. It's actually paragraph 64 of the
22 final PSR.

23 THE COURT: Yes, sir.

24 MR. CECUTTI: And my objection is that the language
25 used to describe the offense is misleading, because it suggests

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1 that Mr. Thompson was in actual possession of a loaded firearm
2 inside a car. The description actually doesn't even contain
3 the fact that Mr. Thompson was inside a car, and the point that
4 I want to raise in my objection, your Honor, is that
5 Mr. Thompson was inside a car that he did not own, he was not
6 the driver; he was a passenger in that vehicle. It was unknown
7 to him that a gun was in the car. The passengers along with
8 Mr. Thompson and the driver were all arrested. Mr. Thompson
9 was charged with the possession of the firearm along with
10 possession of narcotics, misdemeanor quantity of narcotics.
11 Mr. Thompson ended up being convicted of misdemeanor possession
12 of narcotics, and the gun charge was dismissed.

13 My objection again, your Honor, is that this paragraph
14 is misleading, suggesting Mr. Thompson was in possession of a
15 gun when in fact he was not.

16 THE COURT: As I read probation's response on page 19,
17 and looking back at paragraph 64, it seemed that probation was
18 simply echoing the police report.

19 MR. CECUTTI: That may be true, your Honor.

20 THE COURT: And I don't think it changes the criminal
21 history calculation.

22 MR. CECUTTI: Correct, yes.

23 THE COURT: OK. I have one other question. In
24 paragraph 70, which is the state arrest apparently in
25 connection with this offense, it says here that Mr. Thompson

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1 was charged with murder in the second degree. What was that
2 about? Nobody was killed.

3 MR. CECUTTI: Correct, your Honor. I think that
4 initially Mr. Thompson and the other defendants were charged
5 with that offense incorrectly.

6 THE COURT: Obviously.

7 MR. CECUTTI: Right.

8 THE COURT: OK, so that was just a mistake.

9 MR. CECUTTI: I believe so, yes.

10 THE COURT: OK. Are there any other objections to the
11 presentence report?

12 MR. CECUTTI: Not from us, your Honor.

13 THE COURT: Thank you. With respect to the offense
14 level computation, I accept the findings of the presentence
15 report set forth at paragraphs 49 through 60, which conclude
16 that a total offense level of 29 is appropriate.

17 With respect to the defendant's criminal history, I
18 accept the findings of the presentence report set forth at
19 paragraphs 61 through 70, which conclude that a Criminal
20 History Category of III is appropriate.

21 Counsel, I have the defendant's sentencing memorandum
22 dated August 27, I have the government's sentencing submission
23 dated September 1, and I have Mr. Cecutti's letter of August
24 31. Are there any additional written materials I should be
25 looking at?

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1 MR. COOPER: No, your Honor.

2 MR. CECUTTI: No, your Honor.

3 THE COURT: Thank you. Mr. Cecutti, would you like to
4 speak on behalf of Mr. Thompson?

5 MR. CECUTTI: Yes. Under the plea agreement, your
6 Honor is well aware and the government is well aware that I
7 can't ask for a sentence below 108 months, but I will note that
8 probation does recommend a sentence below the guidelines of 72
9 months, and that's based primarily on a variance related to
10 what the other defendants in this case have received.

11 And I will get into this a little further, your Honor,
12 but to bring it to the court's attention now, Mr. Rafliff was
13 sentenced by Judge Patterson and received a sentence of 33
14 months. Ryan Campbell most recently by Judge Scheindlin was
15 sentenced to 70 months. Your Honor is well aware that
16 Mr. Robinson was sentenced to the maximum of 240 months. And
17 Allen Williams was sentenced by your Honor to 108 months.

18 And I simply ask that your Honor consider the 3553(a)
19 factors, especially those that I highlighted in our submission
20 and impose a sentence today that is sufficient but not greater
21 than necessary.

22 We made an effort, your Honor, to provide a
23 comprehensive set of materials for your Honor to evaluate to
24 consider what the appropriate sentence will be, and I'm not
25 going to get into everything that we had submitted to your

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1 Honor back on August 27, however, I do want to raise a couple
2 of points that I think are worth mentioning today. The first
3 one is the nature of the offense and, secondly, the sentences
4 that were received by the other defendants that I just
5 mentioned. And I do have some final thoughts as well.

6 With respect to the nature of the offense,
7 Mr. Thompson is 31 years old. He is a father, he is a son, he
8 is a grandson, he is a close member of his family, and he is
9 also a close member of his church community.

10 He grew up in East New York in Brownsville, an area
11 that still today is plagued with violence and drugs and
12 poverty, and while Mr. Thompson was growing up he didn't
13 succumb to those temptations, if you will. He was somebody
14 that was raised in single parent households initially by his
15 grandmother and then by his mother. He was actively involved
16 in his church community while he was a teenager. He was
17 working as well and in school. He graduated from high school.
18 He is one of the few people in his neighborhood during that
19 time period that graduated from high school. And he was on his
20 way to leading a productive, law abiding life, a life that was
21 directed towards dreams and goals that he had.

22 Unfortunately in his early 20s he began to use drugs
23 on an increasing level, to the point where he became arrested a
24 few times for drug related offenses, and things culminated,
25 your Honor, in the summer of 2013. And I think that Chivonne

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1 Conway, his partner, describes Mr. Thompson's relationship to
2 drugs at that time best when she says that Mr. Thompson was
3 consumed by his addiction.

4 And this is not to excuse what he did on September
5 2013, your Honor, but simply trying to explain why somebody who
6 grew up in a household with strong values and morals would end
7 up today before your Honor. He was desperate; he was again
8 consumed by his addiction; and he made a very serious mistake.
9 He was also under financial pressure, and he agreed to
10 participate in a robbery. He was not armed. He didn't shoot
11 or assault anyone inside the store, and his participation was
12 limited to taking jewelry from the store.

13 Your Honor, I would like to touch on this crew. The
14 government says in their submission that Mr. Thompson was part
15 of this violent robbery crew. He was not a member of the crew.
16 The members consisted of Williams, Hanson, Roberto Grant, Sean
17 Robinson. The government also points out in previous
18 submissions that this crew recruited both violent people and
19 people who were vulnerable, violent people like Bradley Hanson
20 who had multiple convictions for robberies, people like Allen
21 Williams, who had a prior murder conviction and other robbery
22 convictions. Roberto Grant is another example.

23 The government point out that there were some people
24 who were recruited by this crew who were vulnerable, and
25 Mr. Thompson was one of those individuals, and the government

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1 doesn't challenge that. He was a vulnerable person. Again, he
2 was afflicted with a serious disease, his addiction, he was
3 under a serious financial pressure, and he was desperate. He
4 compromised his values, and again, your Honor, committed the
5 worst mistake of his life and -- I feel confident in saying
6 this -- the worst mistake that he will ever make in his life.
7 He also participated in only one robbery that this crew
8 committed, and he has no prior criminal history for any kind of
9 violence.

10 There is no doubt, your Honor, that the victims here
11 suffered, and it appears that they have continued to suffer,
12 and I understand that, but I think that in all of these
13 robberies victims suffered and continue to suffer. I point to
14 the woman who was hit with a stun gun and knocked unconscious.
15 I'm sure she suffers on a daily basis based on what these
16 individuals did, as well as the victims in the other robberies.

17 With respect to the sentences that other defendants
18 have received, we tried our best to provide for your Honor the
19 sentences that they received along with the actual offense that
20 they committed. And I think it's worth touching on at this
21 point again what these defendants received in terms of their
22 sentences.

23 Allen Williams, as you know, your Honor, received a
24 sentence of 108 months after he participated in four or
25 possibly five robberies, and he had a prior murder conviction.

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1 And the loss amount connected to him was approximately a
2 million dollars.

3 Mr. Rafliff received a sentence from Judge Patterson
4 of 33 months, and he participated in a single robbery; however,
5 in that robbery he was armed, and he also had an open robbery
6 at the time, a state robbery where he had been charged and
7 indicted for robbery in the first degree, which in my
8 understanding would mean that he either caused serious physical
9 harm to somebody as part of that robbery and/or was in
10 possession of a deadly weapon, so a quite serious offense. And
11 the loss amount connected to him was \$200,000.

12 Ryan Campbell was recently sentenced by Judge
13 Scheindlin, and he received a sentence of 70 months, and he
14 participated in one robbery. My understanding is that he may
15 have been a career offender. He was certainly in Criminal
16 History Category VI.

17 Again, Mr. Thompson has participated in one robbery,
18 and he received absolutely nothing from this. He hoped to gain
19 \$500. And he was found in possession of one ring at the time
20 that he was arrested.

21 With respect to the guidelines, your Honor, the court
22 is well aware -- and I don't need to remind your Honor -- that
23 the guidelines are advisory and that the court must consider
24 all the factors under 3553(a).

25 And I simply point out that the government says that

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1 all the defendants that have been sentenced have received
2 guideline sentences. Obviously I'm not disputing that, but I
3 think that the guidelines don't fully capture all the 3553(a)
4 factors. Particularly, they don't capture everything related
5 to Mr. Thompson, for instance, how he has conducted himself
6 while he has been in jail, his family who is in the audience,
7 including his mother and grandmother, and everyone else,
8 including members of their church community that are also
9 present, his history of substance abuse and his motivations
10 related to the robbery that he had committed, and the impact of
11 a lengthy sentence on his family, especially on his children.
12 The guidelines simply don't capture those things that are
13 important here today.

14 Finally, your Honor, I want to point out that the
15 Mr. Thompson who is sitting right now and who will be standing
16 before you shortly today on September 2, 2015 is not the same
17 Mr. Thompson when he was arrested on September 23, 2013. He
18 has been in jail for approximately two years, and during that
19 time period he has done the best that he possibly can in an
20 environment, a prison environment where there are all kinds of
21 temptations. There's drugs, there's violence, there is real
22 danger in prison, and yet he has not succumbed to that. In
23 fact he has done the exact opposite. He has been drug free.
24 He has worked hard, as indicated by his work evaluation. He
25 has been productive. He has tried to help other inmates as

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1 well, and tried to be an example to them over the past couple
2 of years. And during that time period he has also reconnected
3 with his family and his church community.

4 So, based upon all of this, your Honor, the factors
5 under 3553(a), we simply ask that your Honor impose a sentence
6 that is sufficient but not greater than necessary. Thank you.

7 THE COURT: Thank you.

8 Mr. Thompson, would you like to speak on your own
9 behalf?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Would you do it now, please.

12 THE DEFENDANT: Yes, ma'am.

13 First I would like to apologize to the victims of not
14 only my robbery but all the robberies that took place during
15 this Hobbs Act conspiracy.

16 Second, I would like to apologize to my family. The
17 reason for that is because not only have I embarrassed them, I
18 have embarrassed myself and my children.

19 Like Mr. Cecutti said, I am not the same person I was
20 on September 23, 2013. I have changed. I am no longer
21 addicted to drugs. I am fully aware of the wrongs that I have
22 committed, and I am fully aware of the things that I must do in
23 order to change that, and in order to be effective in the lives
24 of my children and my family.

25 I also want your Honor to please take note that even

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1 though I committed this offense, I am somewhat grateful for
2 this situation, because it has changed me, and it has made me a
3 better person, and because of that I can actually live with
4 myself, and I feel thankful because I can actually be the son
5 that my mother raised me to be.

6 There is not too much I can say or show how apologetic
7 I am, but I truly am sorry. And if it's possible, I would ask
8 that your Honor allow me to get home to my children and my
9 family sooner than later, because I don't want my son to grow
10 up how I grew up without a father figure.

11 I have already missed key times in his life and my
12 daughter's life, like their first day of school, teaching them
13 how to read, how to write, how to count, and things such as
14 just playing catch. These are things where in my environment
15 where I'm from we are limited to, and before my incarceration I
16 was not able to see that.

17 So, to say the least, I embrace my punishment
18 wholeheartedly because again it has made me who I am today, and
19 I will continue to be productive, whether free or incarcerated,
20 and I will continue to be a positive role model free or
21 incarcerated.

22 I would like to say to my mother I am truly sorry,
23 because she has gone through so much, and I have let her down.

24 And like Mr. Cecutti said, the guidelines do not take
25 into consideration these things, but these things are who I am,

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1 and these things are what made me the person that I will
2 continue to be once I am free and let back into society. Thank
3 you.

4 THE COURT: Thank you, sir.

5 Mr. Cecutti, I read that Ms. Garner and Ms. Conway
6 wish to speak.

7 MR. CECUTTI: They do, your Honor.

8 THE COURT: Yes, sir.

9 MR. CECUTTI: Can they go up to the podium, your
10 Honor?

11 THE COURT: Yes, sir.

12 Good morning, ma'am.

13 MS. CONWAY: Good morning, your Honor. My name is
14 Chivonne Conway. Thank you for the opportunity to speak.
15 Since Kendal and I have got back together, I have seen him
16 grow. He is sorry for what he did, and is ready to live his
17 life according to the morals and values that he was raised
18 with. Kendal is not perfect.

19 We have had our tough times, but I want you to know
20 that he has turned his life around, and I ask that you please
21 consider the changes that he made while he was incarcerated and
22 his true desire to be a loving and engaging father to our six
23 year old son. Thank you.

24 THE COURT: Yes, ma'am. Thank you.

25 Ms. Garner?

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1 MS. GARNER: Good morning, your Honor. I'd like to
2 thank you for this opportunity to allow me to speak on behalf
3 of my son.

4 THE COURT: Yes, ma'am.

5 MS. GARNER: I love my son, and I just wanted you to
6 know that in his character he has a good heart, a heart of
7 gold. He has always been a family caretaker. He has cared for
8 his little brother while I worked two jobs and went to school.
9 He cared for his grandmother, and he cared for his children the
10 first years of their lives.

11 Kendal graduated high school; he worked all through
12 high school. He kept a job, and he helped me provide for the
13 household. At the time that Kendal was arrested, I did notice
14 from the age of 20 some changes in my son, and being in
15 recovery myself I approached my son about his drug addiction,
16 and of course he denied it in denial, so I went to Adam Street
17 Courthouse, and I obtained a mental hygiene warrant, because
18 that was the only way I knew to get my son the help that he
19 needed in a drug program. And the following week he was
20 arrested.

21 Now perhaps I waited too long. I'm a parent, I made
22 mistakes, I'm not perfect, but my son is a victim of my
23 addiction, and I pray that he no longer reaps what I had sown.
24 I have 25 years clean and sober, I work for the New York City
25 Department of Education, I attended the College of New

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1 Rochelle. People can change and grow up.

2 Kendal needs a chance, an opportunity to arrest his
3 disease, not the man, the disease of addiction, so that he can
4 become a productive member of society once again.

5 During the visits, I visit my son over the course of
6 these two years, I have seen his spirit restored, I see the
7 remorsefulness in him, I see growth and maturity, and for this
8 I'm grateful. I thank you for this opportunity.

9 THE COURT: Yes, ma'am.

10 Does the government wish to be heard?

11 MR. COOPER: Briefly, your Honor. The court is
12 familiar with the nature of this case from the prior
13 proceedings. I'm not going to rehash all of that. I just want
14 to underscore a couple of points that we make in our submission
15 and make one further point.

16 First, in terms of the profound effect that this
17 particular robbery, not any of the others in the conspiracy,
18 but the September 2013 robbery had on the victims, the
19 government met with the store owner, his son and a woman who
20 also worked in the store in preparation for trial, because we
21 did get fairly close to trial in this case. This was the most
22 traumatic event in their lives. One of them was shot, a second
23 one was shot at, and the third, the employee, was absolutely
24 terrorized.

25 We spoke to them again more recently in preparation

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1 for this proceeding at Mr. Robinson's sentencing. As you are
2 aware, none of them elected to submit letters or show up in
3 court because they just wanted nothing more to do with this
4 case. But the PSR does reflect victim statements from the
5 store owner's son, which are quite serious and really reflect
6 the physical and emotional harm that this robbery wrought.

7 The second point, Mr. Cecutti didn't focus on in his
8 remarks today, but I do feel I need to respond because it's in
9 his submission, about the defendant's attempt to recast his
10 role in this robbery as believing that he was going to do a
11 credit card fraud and being surprised or having no advanced
12 knowledge that weapons were going to be used. To be clear, we
13 have no direct evidence that controverts that. Probation is
14 skeptical of those claims as they note on page 22 of the PSR,
15 and we believe that the undisputed facts do reflect -- or the
16 fair inference from those facts reflects that the defendant was
17 a full and knowing participant in all aspect of his robbery.

18 And also to be clear, we don't believe that he was
19 armed with a firearm that day, but almost immediately after the
20 three robbers entered the store, the other two individuals
21 produced firearms. Notwithstanding that, the defendant
22 proceeded, jumped with a co-defendant over a jewelry case, had
23 the presence of mind to grab jewelry and take one ring -- and
24 stash it securely enough in his shoe that it was not found
25 until later that day when the police searched him prior to

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1 putting him into a holding cell at the police precinct -- and
2 then he fled along with the others.

3 We believe that the fair inference from all of that is
4 that he knew what was going to happen, and when firearms were
5 produced he didn't flinch, and he proceeded with what they
6 intended to do that day.

7 The last point that I want to make is that all of this
8 is the reason that the government felt it important in this
9 plea agreement to have the defendant agree not to seek a
10 sentence outside the guidelines range, and the reason is that
11 the guidelines reflect this offense.

12 To Mr. Cecutti's point, there are other factors that
13 of course the court should consider, and Mr. Cecutti and the
14 defendant have laid them out for the court, as have the letters
15 and the speeches. But the guidelines here reflect the profound
16 impact on the victims and the fact that but for a few strokes
17 of luck the store owner and his son could be in a much, much
18 different position than they are today. And that's why we felt
19 it important to enter into this type of plea agreement for this
20 type of crime based on this type of evidence.

21 Unless the court has any further questions, that's all
22 we have to say.

23 THE COURT: Thank you very much.

24 MR. COOPER: Thank you, your Honor.

25 THE COURT: Is there anything further, Mr. Cecutti?

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1 MR. CECUTTI: Your Honor, if I may, to share a brief
2 story I had with the late Judge Patterson, I knew Judge
3 Patterson over a few years, and he and I would have a couple of
4 conversations after certain appearances like conferences, and I
5 remember having a conversation with him maybe three or four
6 months before he passed away, and we had a very brief
7 discussion about the guidelines, and he said, you know what,
8 Mr. Cecutti? I said, what's that, Judge Patterson? He said,
9 the guidelines don't capture everything about a person; they're
10 a mathematical formula; they're a grid; and the guidelines are
11 not based upon what our country holds dearly, such as
12 forgiveness and mercy.

13 I thought that was a very insightful comment, and I
14 just simply wanted to share it, since the government is
15 emphasizing that a guideline sentence is the appropriate thing.
16 I simply ask your Honor that you consider again all the factors
17 under 3553(a), this story, and impose a sentence that is
18 sufficient but not greater than necessary. Thank you.

19 THE COURT: Anything else from the government?

20 MR. COOPER: No. Thank you, your Honor.

21 THE COURT: Thank you.

22 Counsel, as you have heard, I have in fact calculated
23 the guidelines and do take them into account.

24 I find that the total offense level accurately
25 describes the nature and circumstances of the offense.

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1 As both of the parties have confirmed, the total
2 offense level does reflect the very serious nature of this
3 offense.

4 Whatever the fact is about Mr. Thompson's knowledge or
5 lack of knowledge about the other defendants having firearms,
6 the fact is that the guidelines calculation of the total
7 offense level is appropriate because of the nature of the
8 offense.

9 As the government noted, and as is noted in the
10 presentence report, the victims were terrorized, one was
11 terribly injured. They ended up closing the jewelry store and
12 have not gone back into the business, and it was a business
13 they had for a decade or more. So, it is a serious offense,
14 and I will say there was no one here today who is denying that.

15 With respect to the history and characteristics of the
16 defendant, the Criminal History Category III which Mr. Thompson
17 is in is of course accurate. I do note that Mr. Thompson has
18 never been to jail before, which is something that is unusual
19 for a defendant in Criminal History Category III.

20 I also note, as defense counsel noted, that there are
21 factors with respect to the history and characteristics of this
22 defendant that are not reflected anywhere in the guidelines.
23 The ones that I see as being relevant here are Mr. Thompson's
24 extraordinary remorse. I also note his completely changed way
25 of thinking. When he says he is a different man, I think that

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1 the facts before us in the presentence report and in the
2 letters attached to the defense sentencing submission do
3 reflect that.

4 The fact that Mr. Thompson sees more clearly now what
5 I think most normal people see about crime and about the need
6 to care for one's family and adhere to the moral values of this
7 country is a huge step in the right direction, and I take that
8 into account.

9 Going back for one moment to the nature and
10 circumstances of the offense. While we all agree that the
11 calculation of the total offense level is legally appropriate,
12 I also take into the account the fact that Mr. Thompson himself
13 was not armed and did not impose any injury upon any of the
14 victims.

15 With respect to the paragraph two factors, we have all
16 agreed that an incarceratory sentence is necessary to reflect
17 the very serious nature of this offense. It can't be denied
18 that an incarceratory sentence is necessary for public
19 deterrence.

20 With respect to paragraph C though, I am persuaded
21 that there is no need for extensive incarceration to protect
22 the public from further crimes of this defendant. I take
23 Mr. Thompson at his word, and I take Ms. Conway and Ms. Garner
24 at their words that Mr. Thompson is not going to stray from the
25 law ever again.

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1 The paragraph D factors are less important here. I
2 have taken into account of course the paragraph 3, 4 and 5
3 factors.

4 With respect to paragraph 6, the need to avoid
5 unwarranted sentencing disparities, that is a concern here, as
6 pointed out both by the probation department and the defense
7 submissions.

8 I note the government's position -- which in my view
9 is a well founded position -- that in this plea agreement
10 Mr. Thompson was not permitted to argue for a below-guideline
11 sentence, and I understand that position. However, I do note
12 the disparities in the other sentences in this case.

13 I particularly note the sentence that Judge Scheindlin
14 imposed on Mr. Campbell, who was a participant in a single
15 robbery, albeit I think not this robbery. So, of course the
16 violence in that robbery was less than this robbery.

17 On the other hand, Mr. Campbell was in Criminal
18 History Category VI, and Mr. Campbell will receive 70 months.
19 I have some concern about that.

20 I have no concern of course about Mr. Robinson who was
21 fully entitled to the sentence he received, but I have concern
22 about the sentencing disparities.

23 I am, of course, aware that in considering sentencing
24 disparities it is my obligation to consider all similar crimes,
25 not just the ones in this case, but I do take this case into

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1 account.

2 And, finally, paragraph 7 is of lesser import here.

3 Taking all of these factors into account, counsel, and
4 particularly taking into account the support network that
5 Mr. Thompson has between his relatives, his partner and his
6 church, it is my intention to impose a sentence of 60 months'
7 incarceration.

8 It is also my intention to impose the recommended
9 period of supervised release of three years.

10 It is my intention to impose the recommended special
11 conditions of participation in an outpatient drug program and
12 submission to the search provision.

13 It is not my intention to impose a fine. I'm finding
14 that Mr. Thompson is not able to address a fine.

15 It is my intention to impose the \$100 special
16 assessment.

17 Counsel, is there any reason such a sentence should
18 not be imposed?

19 MR. COOPER: No, your Honor.

20 MR. CECUTTI: No, your Honor.

21 THE COURT: Very well.

22 Mr. Thompson --

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: -- you are sentenced, sir, to a period of
25 60 months' incarceration. Following that time you will spend a

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1 period of three years on supervised release. During that
2 period you will comply with all of the standard terms and
3 conditions of supervised release; among them are that you not
4 commit another federal, state or local crime; you not illegally
5 possess a controlled substance; and you not possess a firearm
6 or other destructive device.

7 In addition to those and all of the other standard
8 terms and conditions of supervised release, during that period
9 you will participate in an outpatient substance abuse program.
10 That program will include testing to determine whether you have
11 returned to the use of drugs. The court authorizes the release
12 of available drug treatment evaluations and reports to the
13 substance abuse treatment provider as approved by the probation
14 officer. At the probation officer's approval, the PSR may also
15 be disclosed.

16 Sir, you might be required to contribute some or all
17 of the cost of the program, depending on your ability to pay
18 and availability of third-party payment.

19 In addition, during that period you will submit your
20 person, residence, vehicle, place of business, electronic
21 devices, and any other premises under your control to a search
22 on the ground that the probation officer has reasonable belief
23 that contraband or evidence of a violation of the terms and
24 conditions of your release can be found there.

25 Such a search must be conducted at a reasonable time

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1 and in a reasonable manner. Failure to submit to such a search
2 may be grounds for revoking your supervised release.

3 It will be your obligation to inform other residents
4 of the premises or users of the electronic devices that this
5 premises or the devices might be subject to a search.

6 As I mentioned, I did not impose a fine, but I do
7 impose the mandatory \$100 special assessment, and that should
8 be paid promptly.

9 It is my duty to inform you, sir, that unless you have
10 waived it, you have the right to appeal this sentence, and you
11 might have the right to appeal in forma pauperis, which means
12 as a poor person, with the waiver of certain fees and expenses.

13 Mr. Cecutti, did you wish a recommendation?

14 MR. CECUTTI: Yes, Judge. I am requesting a
15 recommendation to the RDAP program, and specifically three
16 different facilities: Danbury, Fort Dix and Fairton, please.
17 And if Mr. Thompson is not permitted participate in RDAP, I
18 request that he be recommended to Otisville.

19 THE COURT: It is the court's recommendation that
20 Mr. Thompson be permitted to participate in the Bureau of
21 Prisons' RDAP program. He seems particularly an appropriate
22 candidate for that. It is also the court's recommendation that
23 he be permitted to do so either at the Danbury, Fort Dix or
24 Fairton facility.

25 If the Bureau of Prisons sees fit not to follow this

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1 recommendation, it is the court's recommendation that
2 Mr. Thompson be designated to the Otisville facility.

3 MR. CECUTTI: Your Honor, I have another application.
4 I'm not sure if your Honor can recommend this, but I make this
5 request based upon Mr. Thompson's work history at the MDC.

6 As your Honor knows, he has worked very hard at the
7 MDC, and it has been brought to my attention that he may be
8 able to work at whatever facility as a work cadre. I'm not
9 sure if your Honor can recommend that, but I raise it now in
10 the event that you can.

11 THE COURT: It's the court's recommendation that in
12 light of Mr. Thompson's excellent work reports while at the
13 MDC, he be permitted to work in the work cadre at the
14 designated facility.

15 MR. CECUTTI: Thank you.

16 THE COURT: Anything else from the government? Yes,
17 Mr. Cecutti.

18 MR. CECUTTI: Your Honor, just one point of
19 clarification. Your Honor's sentence of 60 months, does that
20 take into account the seven months that Mr. Thompson spent
21 while he was in state custody? I'm not sure if it does, and I
22 want to raise it now so we are all on the same page.

23 THE COURT: I think it probably does.

24 Mr. Cooper, do you have a view on that?

25 MR. COOPER: I don't know, your Honor. I'm not sure

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1 whether the BOP will count it.

2 THE COURT: OK. Because the seven months was on the
3 same crime, it's the court's recommendation that BOP include
4 that seven months in its calculation of Mr. Thompson's time.

5 MR. CECUTTI: Thank you.

6 THE COURT: Anything else?

7 MR. COOPER: Your Honor, there are open counts and
8 underlying indictments. The government moves to dismiss those.

9 THE COURT: So ordered.

10 MR. COOPER: Thank you.

11 THE COURT: Mr. Thompson.

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: You are one lucky man. You have one good
14 family and a lot of good friends and one good church behind
15 you. Don't screw it up. Let me know what you're doing. Write
16 me a card from time to time. But I do not expect to see you
17 sitting there next to Mr. Cecutti on any occasion.

18 THE DEFENDANT: No, ma'am.

19 THE COURT: You seem to have gotten the message. Now
20 do what you have to do.

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Yes, sir. Good morning, counsel. Thank
23 you for your assistance.

24 Ladies and gentlemen, thank you for being present.

25 * * *

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